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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. No. 760 of 2004

1. Smt. Tikeshwari Kunwar Singh, W/o Late Virendra Singh Dau, Aged about 36 years.

2. Bhojpal, S/o Late Virendra Singh Dau, Aged about 16 years.

3. Ku. Kussum, S/o Late Virendra Singh Dau, Aged about 13 years.

4. Naimish Kumar, S/o Late Virendra Singh Dau, Aged about 08 years.

All Through : His Natural Guardian Mother Smt. Tikeshwari Kunwar Singh, W/o Late Virendra Singh Dau, All of R/o Rajapara, Raigarh Tahsil & Distt. Raigarh.

---- Appellants

Versus

1. Sardar Jagatar Singh, S/o Sardar Chhota Singh, aged about 28 years, Occupation-Vehicle Owner, R/o 77 C.R. Avenue Calcutta 12 & 20 Bagmari Road, Calcutta 54 (West Bengal)

2. Moh. Aslam, S/o Moh. Nishar Khan, aged about 30 years, Occupation-Vehicle Driver, R/o Vilage Ware, Tahna-Barampur Distt. Gajipur (UP) **(Died) Omitted**

3. The New India Insurance Co. Ltd. Division 512800, 11, Prafull Sarkar Street Calcutta-72 (West Bangal)

4. Smt Prabhudani, W/o Navin Xalxo aged about 57 years,

5. Ku. Anita Xalxo, D/o Navin Xalxo aged about 25 years,

6. Ku. Kurbani Xalxo D/o Navin Xalxo, aged about 22 years

All residence Rambhata, Raigarh, Tah. & Distt. Raigarh (CG)

------Respondents

For Appellants:	:	Shri Amit Sharma and Shri Basant Dewangan, Advocates.
For Respondent No.3	:	Shri Sourabh Sharma, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J

Order On Board

23/06/2017

1. This is the Claimants' Appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') against the award dated 5.2.2004 passed by 3rd Additional Motor Accident Claims Tribunal, Raigarh (for short 'the Tribunal') in Claim Case No.31/2002 whereby the Tribunal has awarded a sum of Rs.5,60,000/- to the Claimants and also awarded interest @ 9% p.a conditionally, in case, the same was not paid within the period of one month from the date of award.

2. Brief facts of the case are that the deceased Virendra Singh Dau, aged about 40 years who was an employee of Chhattisgarh State Electricity Board performing his duties as Clerk was travelling by a jeep from Raigarh to Sarangarh. En route, near the village Godam Banjari marg, the vehicle was dashed vehemently by the offending vehicle/truck bearing its registration No.WB-03/8427. The vehicle in question was being driven rashly and negligently by its driver Mohd. Aslam as a result of which, the deceased Virendra Singh Dau died and therefore, the Claimants, being the legal representatives of the deceased, have instituted a claim under Section 166 of the Act and have claimed a total compensation of Rs.11,10,000/-.

3. Respondent No.1 is the owner of the offending vehicle in question and was treated ex parte before the Tribunal while the driver of the vehicle in question namely Mohd. Aslam has expired whereas the Insurance Company i.e. Respondent No.3 herein has contested the claim on the ground that the driver of the vehicle in question was not possessing a valid driving license and therefore, the Insurance Company is not required to indemnify the insured.

4. Upon due consideration of the facts involved in the matter, the Tribunal, vide vide its impugned award dated 5.2.2004, had held that the vehicle in question was being driven rashly and negligently by its driver Mohd Aslam because of which, the accident occurred and the deceased Virendra Singh Dau has died. It held further that since the driver was possessing a valid driving license therefore, Insurance Company cannot be exonerated. In consequence, while assessing the income of the deceased at Rs.5,940/-- per month and that by deducting a total sum of Rs.621.50/- on different heads, has calculated the amount of compensation by assessing the income of the deceased at Rs.5,318.50/- (rounded of to Rs.5,318/-) and also by deducting 1/3rd of it towards his personal expenses and that by calculating consortium as well as funeral expenses respectively as Rs.5,000/-and Rs.2,000/-, the total amount of compensation to the tune of Rs.5,60,000/- has been awarded by the Tribunal with 9% interest p.a conditionally if the amount of compensation has not been paid within a period of one month from the date of the award.

5. Learned Counsel for the Appellant submits that the amount of deduction of Rs.621.50/- as made by the Tribunal is apparently contrary to law because the said amount which has been deducted was in fact belonging to the deceased himself and therefore, it cannot be deducted. He relied upon the principles laid down in the case of **Smt. Sarla Verma & Ors vs. Delhi Transport Corporation & Anr** reported in ***(2009) 6 SCC 121*** and argued further that the Claimants are entitled to 30% towards future income prospect and ¼ th of the deduction was in fact required to be made in view of the said decision. It has been further argued that the amount of Rs.5,000/- and Rs.2,000/- as awarded towards consortium and funeral expenses was on a meagre side and therefore, it is also required to be enhanced. It has also been submitted that the interest as awarded conditionally is not proper and was in fact required to be awarded from the date of the Claim Petition.

6. On the other hand, learned Counsel for Respondent No.3 has submitted that the deduction as made by the Tribunal is proper and therefore, it does not require to be interfered. It is also submitted that since the accident has occurred in the year 1997 and therefore, the principles laid down in Sarla

73

Verma's case are not required to be taken into consideration.

7. I have heard learned Counsel for the parties and carefully examined the records.

8. Since the only question which requires consideration by this Court is with regard to the amount of compensation as to whether it was properly awarded by the Tribunal or not and, whether the monthly income was properly assessed while granting the amount of compensation and/or, whether the interest as awarded conditionally is justifiable and/or, what is the just and fair amount of compensation payable to the Claimant.

9. The other findings recorded by the Tribunal except with regard to the amount of compensation, is hereby affirmed.

10. As far as the amount of compensation assessed by the Tribunal is concerned, the same is not proper in the opinion of this Court as a bare perusal of the pay certificate marked as Exhibit P-1 would reveal that the monthly income of the deceased was at Rs.5,940/- and the deduction i.e. Rs.621.50/- under different heads was also from his own income and therefore the considered opinion of this Court is that the deduction as made is not proper and therefore, the amount of compensation as awarded by the Tribunal while assessing the monthly income of the deceased at Rs.5,318/- is not proper and, in fact it ought to have been at Rs.5,940/-. Moreover, in view of the principles laid down in Sarla Verma's case, 30% future income prospect is also required to be taken into consideration and if the same is taken into consideration, then the monthly income which was required to be taken into consideration would be at Rs.7,722/-.

11. Further, deduction of 1/3rd in stead of 1/4th by the Tribunal is also not proper in view of the principles laid down in above mentioned Sarla Verma's case. The amount of compensation with regard to the consortium and funeral expenses as awarded by the Tribunal at Rs.5,000/- and Rs.2,000/- respectively is also on the lower side, therefore, I am enhancing the same as Rs.10,000/- and 5,000/- respectively in stead thereof, in this regard.

12. Thus, the Claimants are entitled to a total amount of compensation to the tune of Rs.9,18,552/- i.e. the monthly dependency after deduction of 1/4th would be Rs.5,792- (7,722 x ¼ = 1,930/- i.e. 7,722 – 1,930 = 5,792/-), yearly Rs.69,504/- (5,792 x 12), thus, the total amount of dependency after applying the multiplier of 13 would come to Rs.9,03,552/-. The Claimants are also entitled to a sum of. Rs.15,000/- towards future expenses as well as consortium. Therefore, the total amount of compensation which the Claimants would be entitled would be to the tune of Rs.9,18,552/-. Since the interest as awarded conditionally by the Tribunal is not proper and therefore, I set aside the same and direct further that this amount of compensation will carry interest at the rate 6% p.a from the date of filing of Claim Petition i.e. 15.10.1997 till its realization.

13. The Appeal is allowed and modified to the extent indicated above. There shall be no order as to costs.

Sd/-
Sanjay Agrawal
Judge

Yogesh